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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JENNY LISETTE FLORES, <i>et al.</i> ,)	Case CV 85-4544 DMG-AGRx
)	
Plaintiffs,)	PLAINTIFFS' REPLY TO
)	DEFENDANTS' OPPOSITION TO
- vs -)	MOTION TO ENFORCE
)	
WILLIAM BARR, ATTORNEY)	
GENERAL)	
OF THE UNITED STATES, <i>et al.</i> ,)	
)	
Defendants.)	[HON. DOLLY M. GEE]

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I. INTRODUCTION¹

On June 28, 2019, Plaintiffs filed a Motion to Enforce the Settlement (“Motion”) regarding the detention of class members at Homestead (“Homestead”). [Doc. # 578].² On , 2019, this Court referred the Motion to the

1 Defendants have forwarded to Plaintiffs a declaration executed by the Director of the Office of Refugee Resettlement dated August 14, 2019, stating in part that “[b]arring a dramatic increase in UACs referred to ORR and/or a decrease in the licensed beds, I do not expect ORR to place UACs at Homestead in the coming weeks and possible months.” Declaration of Jonathan Hayes ¶ 13. News reports state that on August 3, several hundred class members at Homestead were abruptly relocated. A tropical wave in the Atlantic Ocean was what reportedly triggered the move of the children. *See* The Miami Herald, *Homestead detention center for immigrant children expected to reopen as soon as October* (August 13, 2019) available at <https://www.msn.com/en-us/news/us/homestead-detention-center-for-immigrant-children-expected-to-reopen-as-soon-as-october/ar-AAFOpFL> (last checked August 22, 2019). The Miami Herald report is based on statements by a federal official who “oversees the operation.” The article states that HHS/ORR is expected to begin placing class members again in Homestead “as early as October or November” or after the hurricane season ends. Defendants reportedly plan to expand Homestead to detain as many as 3,200 class members. U.S. Dep’t Health & Human Servs., *Fact Sheet: Unaccompanied Alien Children sheltered at Homestead Job Corps Site, Homestead, Florida*, April 1, 2019. (Available at <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Sheltered-at-Homestead.pdf>). Defendants have not agreed to modify their challenged policies. Not using Homestead for a few weeks or “possibly” months does not moot the pending motion inasmuch as Defendants could avoid judicial review and then resume their challenged policies at any time. Nevertheless, the parties are conferring and will discuss with the Special Monitor the terms under which the motion may be held in abeyance. The parties may also continue mediation with the Special Monitor.

2 Homestead is operated by the for-profit corporation Comprehensive Health Services, Inc. (“CHS”). In February 2018, Defendants awarded CHS a \$31 million contract to oversee the Homestead detention camp. In April 2019, Defendants awarded CHS a no-bid contract worth more than \$341 million to expand Homestead. *See* Washington Post, *Lawmakers ask watchdog to probe migrant teen camp’s contract* (May 14, 2019), available at <https://www.apnews.com/>.

1 Special Monitor (“Monitor”) for a Report and Recommendation pursuant to
2 Paragraph A.2 of the Appointment Order [Doc. ## 553]. On August 2, 2019,
3 Defendants’ filed their Response in Opposition (“Opposition”) to the Motion.
4 [Doc. # 609]. On August 2, 2019, Defendants also filed a Motion to Exclude
5 Plaintiffs’ Declarations and Request for an Evidentiary Hearing Before the
6 Special Master (“Motion to Exclude”). [Doc. # 612]. On August 6, 2019, the
7 Court referred the Motion to Exclude to the Monitor. [Doc. # 616]. Plaintiffs
8 are filing a separate Partial Opposition to the Motion to Exclude.
9
10

11 While Defendants’ pedantic Opposition nitpicks at details in class
12 members’ declarations, the factual disputes raised by Defendants are
13 inconsequential to adjudication of the motion. As discussed *infra*, there are no
14 material factual disputes with regards Defendants’ written policies that
15 undeniably result in denials and delays in class members being promptly
16 released to sponsors under Paragraph 14 of the Settlement, class members not
17 being expeditiously transferred to available and appropriate licensed placements
18 under Paragraphs 12A and 19, and class members not having adequate
19 telephonic contact with parents or other sponsors under Exhibit 1 Paragraph 11.
20
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23 Both this Court and the Court of Appeals have made clear that the
24 occurrence of “influxes” was taken into account in the Settlement.³ Defendants
25

26
27 ³ See Order Re Response to Order to Show Cause at 9-10 (“August 2015
28 Order”) [Doc. # 189]; Order Re Plaintiffs’ Motion to Enforce and Appoint a

1 are not free to create a new definition of an “influx” inconsistent with the plain
2 terms of the Settlement,⁴ and then deviate from the Settlement’s terms when
3 circumstances match their revised definition of an influx.
4

5 During an influx, the Settlement requires the prompt release of minors to
6 available sponsors identified in Paragraph 14, and “[i]n any case in which
7 [Defendants] do[] not release a minor pursuant to Paragraph 14 ... such minor
8 shall be placed temporarily in a licensed program until such time as release can
9 be effected in accordance with Paragraph 14 ... or until the minor's immigration
10 proceedings are concluded ...” Settlement ¶ 19. “[A]ll minors [shall be placed
11 in licensed facilities] pursuant to Paragraph 19 as expeditiously as possible.” *Id.*
12 ¶ 12.A.
13
14

15 Defendants admit that the only class members they allegedly
16 expeditiously transfer from Homestead (or any influx center) to licensed
17 facilities are those without sponsors (a group Defendants call “Category 4”
18
19

20 Special Monitor at 30 (“June 2017 Order”) [Doc. # 363]; *Flores v. Lynch*, 828
21 F.3d 898, 910 (9th Cir. 2016).

22 4 The Settlement defines an “influx” as existing when more than 130 minors in
23 Defendants’ custody are eligible for placement in a licensed program under
24 Paragraph 19. Settlement ¶ 12.B. It is undisputed that almost since the
25 Settlement was reached, an influx has existed. Significantly, the only
26 requirement in the Settlement relevant here that are modified in an influx is that
27 rather than placing minors in a licensed placement within three to five days of
28 apprehension (Settlement ¶12.A), the minor must be placed in a licensed
program “as expeditiously as possible ...” Settlement ¶ 12.A.3 (“in the event of
an emergency or influx of minors into the United States, in which case the
[Defendants] shall place all minors [in licensed facilities] pursuant to
Paragraph 19 as expeditiously as possible”).

1 class members) and those with special needs. *See* Opposition at 10:1-4 [Doc. #
2 609]; Sualog Dec. at ¶ 41; ORR Rule 1.7.2 and ORR Rule 1.7.3. When
3 requiring the expeditious placement of minors in licensed facilities, the
4 Settlement makes no distinction between the groups Defendants say they
5 expeditiously place in licensed facilities and all other detained class members—
6 *i.e.* those with potential sponsors—who are neither a flight risk nor a danger.
7 Defendants’ data shows that their policy has resulted in hundreds of class
8 members being detained at Homestead for weeks or months, even as newly
9 available beds in licensed facilities are filled with newly detained minors not
10 unlucky enough to be assigned to Homestead.
11

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13
14 Regardless of the details in class members’ or doctors’ declarations with
15 which Defendants may quibble, their policies and the implementation of those
16 policies violate the plain terms of the Settlement.
17

18 II. ARGUMENT

19 A. Briefly detaining apprehended class members in unlicensed facilities 20 such as Homestead is not prohibited by the Settlement, but 21 Defendants may not hold minors in unlicensed facilities for long 22 periods of time because the facilities are on federal land or meet “the majority” of the Settlement’s licensing requirements.

23 Defendants first argue that they may detain class members at Homestead
24 regardless of the Settlement’s terms requiring expeditious placement in a
25 licensed facility because it “operates ... on federal property and is therefore not
26 required to obtain a license from the State of Florida.” Opposition at 8, *citing*
27
28

1 Declaration of Jallyn Sualog (“Sualog Decl.”) [Doc. # 609-1]. ORR also states
2 that “[b]ecause of the temporary and emergency nature of Influx Care Facilities,
3 they may not be licensed or may be exempted from licensing requirements by
4 State and local licensing agencies.” *See* Office of Refugee Resettlement, *ORR*
5 *Guide: Children Entering the United States Unaccompanied, Rule 1.7*
6 *Placement and Operations During an Influx* (last updated March 21, 2016),
7 available at [https://www.acf.hhs.gov/orr/resource/children-entering-the-united-](https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.7)
8 [states-unaccompanied-section-1#1.7](https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.7).
9
10

11 Following apprehension the Settlement permits the detention of class
12 members for a brief period of time in unlicensed facilities while prompt and
13 continuous efforts are made at release. However, if a class member is not
14 promptly released, the Settlement requires that Defendants transfer the minor to
15 a licensed facility “as expeditiously as possible.” Settlement ¶ 12.A(3). The
16 Settlement nowhere creates an exception to this requirement for detention
17 facilities that Defendants choose to “operate ... on federal property,” or for
18 facilities for which they believe are “not required to obtain a license” from the
19 state in which they are located.⁵
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25 5 When Defendants previously argued that they could hold class members in
26 unlicensed family detention facilities because a state license was not available
27 for the type of facility Defendants operated, this Court responded: “As the Court
28 previously stated, ‘[t]he fact that the family residential centers cannot be
licensed by an appropriate state agency simply means, that under the Agreement,
class members cannot be housed in these facilities except as permitted by the

1 Defendants also argue that “conditions at Homestead comply with the
2 Agreement despite the fact that the facility does not have a state license.”
3 Opposition at 18.⁶ They assert that ORR’s contracts with Homestead “subject
4 the facility to *the majority* of requirements that apply to state-licensed
5 residential facilities. *Id.* (emphasis supplied), *citing* Sualog Dec. ¶ 37.⁷ In any
6
7

8
9 agreement.’ July 24, 2015 Order, 212 F. Supp. 3d at 877.” June 2017 Order at 29 [Doc. # 363].

10 6 The term “licensed program” refers to “any program, agency or organization
11 that is *licensed by an appropriate State agency* to provide residential, group, or
12 foster care services for dependent children, including a program operating group
13 homes, foster homes, or facilities for special needs minors. A licensed program
14 must also meet those standards for licensed programs set forth in Exhibit 1 ...”
15 Settlement ¶ 6 (emphasis added). Exhibit 1 to the Settlement sets forth the
16 requirements for a licensed facility, including an educational assessment and
17 plan (Paragraph A.3(d)), educational services including science, social studies,
18 math, reading, writing and physical education Mondays through Fridays
19 (Paragraph A.4), identifying information regarding immediate family members,
20 other relatives, godparents or friends who may be residing in the United States
21 and may be able to assist in family reunification (Paragraph A.3(h)), individual
22 counseling once a week (Paragraph A.6), group counseling twice a week
23 (Paragraph A.7), visitation and contact with family members (Paragraph A.11),
24 family reunification services and assistance in obtaining legal guardianship
25 when necessary for the release of the minor (Paragraph A.13), and development
26 of a comprehensive individual plan for the care of each detained minor
27 (Paragraph D). Minors shall not be subjected to corporal punishment,
28 humiliation, mental abuse, or punitive interference with the daily functions of
living. Paragraph C. ORR programs “shall maintain adequate records and make
regular reports as required by the [ORR] that permit the [ORR] to monitor and
enforce this order and other requirements and standards ... [and that] are in the
best interests of the minors.” Paragraph F.

7 Defendants have not provided Plaintiffs or the Court with copies of their
contracts with Comprehensive Health Services, Inc. Paragraph 37 of the Sualog
Declaration provides no evidentiary support for her statement that Homestead
complies with the “majority” of Florida’s licensing requirements. Her
declaration cites only to ORR Guide, Section 1.7 (Placement Operations During
An Influx). That section says nothing about the extent to which Homestead

1 event, the Settlement nowhere permits detaining class members for extended
2 periods of time in facilities that meet “the majority” of requirements of a state-
3 licensed facility for the care of dependent minors. Settlement ¶ 6.⁸
4

5
6
7 complies with Florida’s licensing requirements or the Settlement’s requirements
8 for licensed facilities. For example, ORR Guide Section 1.7.6, states that “[t]o
9 the extent practicable, non-State licensed ... Influx Care Facilities [like
10 Homestead] are encouraged to provide the following services Educational
11 services; and Daily Recreational/Leisure time ...” *Id.* On the other hand, the
12 Settlement requires licensed facilities provide educational services in a
13 structured classroom setting, Monday through Friday, including reading
14 materials in such languages as needed, and subjects including science, social
15 studies, math, reading, etc. Settlement, Exhibit 1, ¶ 4. While the ORR Guide
16 requires daily recreational time when “practicable,” the Settlement requires that
17 licensed facilities provide daily outdoor activity, at least one hour per day of
18 large muscle activity, and one hour per day of structured leisure time activities,
19 increased to three hours on days when school is not in session. *Id.* ¶ 5.

20 8 There are numerous Florida licensing requirements that Homestead fails to
21 comply with. For example, licensing standards in the state of Florida include
22 detailed requirements regarding staff training and credentials, child/caregiver
23 ratios, supervision, food preparation, sanitation, transportation, emergency
24 preparedness, and sleeping requirements, among many others. *See Fla. Dep’t*
25 *Children & Families, Child Care Facility Handbook* (October 2017), available at
26 [http://www.dcf.state.fl.us/programs/childcare/docs/handbook/Facility%20Handb](http://www.dcf.state.fl.us/programs/childcare/docs/handbook/Facility%20Handbook.pdf)
27 [ook.pdf](http://www.dcf.state.fl.us/programs/childcare/docs/handbook/Facility%20Handbook.pdf). Florida regulations provide substantial protection for the safety and
28 security of minors in licensed facilities. *See also* Florida Administrative
Regulations § 65C-14.018 Community Interaction (“The facility shall ... assure
that resident children are allowed to become a part of the community”); § 65C-
14.044 Placement Agreement (“The facility shall have a written agreement with
the child, parent, guardian, the department or the licensed child placing agency
which describes the ... frequency of contact with the child’s family ...”); § 65C-
14.042 Orientation (“The facility shall have written policies that encourage and
support ... telephone calls, and other forms of communication with parents ...”).
See Office of Refugee Resettlement, ORR Guide: Children Entering the United
States Unaccompanied, 1.7.6. HPC and Influx Care Facility Services
(last updated Mar. 21, 2016), available at
[https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-](https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.7)
[unaccompanied-section-1#1.7](https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.7).

1 In addition, as this Court has recognized, “[t]he purpose of the
2 [Settlement’s] licensing provision is to provide class members the essential
3 protection of regular and comprehensive oversight by an independent child
4 welfare agency.” July 24, 2015 Order at 14. State child welfare licensing
5 standards are designed to ensure that all child care programs meet minimum
6 requirements to protect the health and well-being of children. In contrast to the
7 comprehensive requirements of state child welfare licensure, ORR’s
8 requirements for its “Influx Care Facilities” are limited to “basic standards of
9 care” that ignore well-established standards for the care of dependent minors.⁹

12 As the Court previously stated, “[t]he fact that the [ICE] family
13 residential centers cannot be licensed by an appropriate state agency simply
14 means that, under the Agreement, class members cannot be housed in these
15 facilities except as permitted by the Agreement.” Order Re Plaintiffs’ Motion to
16 Enforce Settlement and Defendants’ Motion to Amend Settlement Agreement,
17 July 24, 2015 [Doc. # 177] at 12-13, *Flores v. Johnson*, 212 F. Supp. 3d 864,
18 877 (CD Cal. 2015).¹⁰

22 ⁹ See Office of Refugee Resettlement, *ORR Guide: Children Entering the*
23 *United States Unaccompanied*, 1.7.6. *HPC and Influx Care Facility Services*
24 (last updated Mar. 21, 2016), available at
25 <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.7>.

26 ¹⁰ See 212 F. Supp. 3d at 877–78 (discussing Defendants’ argument and
27 concluding that “Defendants are required to provide children who are not
28 released temporary placement in a licensed program”). It also makes no
difference whether Defendants provide amenities at Homestead, such as “meals,

1 Defendants argue that Homestead is not a “secure” facility “as that term is
2 used in the Agreement,” and that Plaintiffs “would have the court believe” that
3 Homestead is a “juvenile detention center” described in Paragraph 21 of the
4 Settlement. Opp. at 19. Plaintiffs simply argue that Defendants are required as
5 expeditiously as possible to place minors in non-secure licensed facilities.
6

7 Defendants go on to admit that at Homestead the doors are locked and the
8 facility is “surrounded by a fence.” Opp. at 19-20. Homestead’s facility
9 administrator has “acknowledged that the facility is surrounded by a tall
10 covered fence and monitored by a large team of patrolling private security
11 contractors.”¹¹ There is no question but that Homestead is a secure facility.¹²
12
13

14 While Defendants pretend that even though unlicensed Homestead meets
15 the *Flores* standards for a licensed facility, the Settlement clearly states that
16

17 medical and dental services, recreational opportunities, and education for school-
18 age children.” July 24, 2015 Order at 13 [Doc. # 177]. Even “[a]ssuming the
19 conditions are acceptable or ... outstanding, however, Defendants cannot be in
20 substantial compliance with the Agreement because the facilities are secure and
21 non-licensed.” *Id.* at 14.

22 ¹¹ Graham Kates, CBS News, *Nation’s largest holding facility for migrant*
23 *children expands again* (April 4, 2019), available at
24 [https://www.cbsnews.com/news/homestead-nations-largest-holding-facility-for-](https://www.cbsnews.com/news/homestead-nations-largest-holding-facility-for-migrant-children-expands-again/)
25 [migrant-children-expands-again/](https://www.cbsnews.com/news/homestead-nations-largest-holding-facility-for-migrant-children-expands-again/) (last checked May 28, 2019).

26 ¹² See also Pls. Ex. 78, Declaration of AVL [Doc. # 578-5] (UACs are not
27 allowed to leave Homestead and must be with a Youth Counselor who watches
28 them all the time); Pls. Ex. 79 ¶ 9, Declaration of DMA [Doc. # 578-5]
(“Children like me are not allowed to leave this detention center ... The YCs
[youth counselors] have told us that if a child tries to leave, the police or other
officials will come looking for us”); see also Exhibit 3 at 13 [Doc. # 578-1]
(includes numerous additional excerpts of declarations evidencing that
Homestead is a secure facility).

1 licensed facilities “shall be *non-secure* ...” Settlement at ¶ 6 (emphasis
2 added).¹³

3
4 Regardless whether Homestead is a secure facility, the Settlement requires
5 that Defendants transfer class members from Homestead to a licensed facility
6 “as expeditiously as possible” (Settlement ¶ 12.A(3)), which Defendants admit
7 they do not do so, except for special needs class members and those who have
8 no sponsors. Opposition at 10.

9
10 Returning to their unexpected influx argument, Defendants interpret the
11 terms of Exhibit 3 to the Settlement as evidence that “the parties never expected
12 that the government would be dealing with the numbers of minors available for
13 placement into its facilities as it is facing today.” Opp. at 21. The parties agreed
14 that when the number of children available for placement exceeds 210,
15 *Defendants are obligated to “locate additional placements through licensed*
16 *programs, county social services departments, and foster family agencies.” Id.*
17 (emphasis supplied).

18
19
20 None of this language indicates that the parties “never expected that the
21 government would be dealing with the numbers of minors available for
22 placement into its facilities as it is facing today.” Opp. at 21. In fact, this
23 language shows that it is Defendants’ obligation to “locate additional
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27 13 Paragraph 11 provides that “[Defendants] shall place each detained minor in
28 the least restrictive setting appropriate to the minor’s age and special needs....”

1 placements” in licensed programs, county social services departments, or foster
2 family agencies should they be required to comply with their obligation under
3 Paragraphs 12.A(3) and 19 to place children in licensed facilities.¹⁴
4

5 No one disagrees that we are in an “influx” situation as defined in the
6 Settlement. This simply means that instead of transferring class members to a
7 licensed facility within 3 to 5 days following apprehension, the transfer must be
8 accomplished “as expeditiously as possible.” Settlement ¶ 12A(3). The
9 Settlement requires that the transfer be to a licensed facility, not a facility like
10 Homestead that is unlicensed even if it “operates on federal land” or meets “the
11 majority” of a state’s licensing or the Settlement’s requirements for licensed
12 facilities.
13
14

15 **B. The Settlement requires that ORR transfer class members from**
16 **Homestead to a licensed facility “as expeditiously as possible,” not on**
17 **“an arbitrary timeline.”**

18 As discussed *supra*, unexpected numbers or not, the Settlement states that
19 in any influx situation detained class members must be expeditiously
20 transferred to a licensed program until such time as release can be affected in
21
22
23

24 14 The language of the Settlement makes clear that what the parties did *not* have
25 in mind was that when the number of class members in custody exceeded 210
26 then Defendants would locate additional bed space in *unlicensed* detention
27 facilities like Homestead. The Settlement states in plain terms that the additional
28 placements will be in “licensed programs, county social services departments,
[or] foster family agencies.” *Id.*

1 accordance with Paragraph 14 or until the minor's immigration proceedings are
2 concluded. Settlement ¶¶ 12A(3) and 19.

3 Plaintiffs' Motion proposed, *inter alia*, that the Court Order Defendants
4 to transfer any class member after 20 days of detention at the unlicensed
5 Homestead facility. Motion at 28. Defendants respond that such a ruling would
6 "arbitrarily" set a time frame for transfers to licensed facilities, and "in the vast
7 majority of cases, transferring a UAC from Homestead to a licensed facility
8 after the child has been at Homestead for 20 days would be more harmful than
9 beneficial to the child." Opp. at 23, *citing* Sualog Dec. ¶ 43. Ms. Sualog's
10 conclusion is "[b]ased on the average length of care for the month of June
11 2019," which she points out was "30 days" for class members with Category 1
12 sponsors, "44 days" for those with Category 2 sponsors, and "88 days" for those
13 with Category 3 sponsors. Sualog Dec. ¶ 43.¹⁵

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18 Aside from the fact that 30, 44, and 88 days strongly indicate that
19 Defendants are not as expeditiously as possible transferring class members to
20 available licensed facilities, Ms. Sualog nowhere addresses the hundreds of
21 class members who are detained at Homestead without being transferred to
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15 Defendants' "averages" data changes from month to month. For example, on
February 13, 2019, HHS reported that the "average" length of stay for class
members detained at Homestead was 67 days.

1 licensed facilities for months *longer* than the “averages” she describes.¹⁶ Per
2 Defendants’ monthly detention reports, as of June 2019:

- 3
- 4 • 4,143 (29.3%) class members were detained more than 90 days.
 - 5 • 2,070 (14.6%) class members were detained between 61 and 90 days.
 - 6 • 4,544 (32.1%) class members were detained between 31 and 60 days.
- 7

8 Ex. 1, Declaration of Peter Schey (August 23, 2019).

9 More importantly, Defendants’ policy is that they simply do *not* transfer
10 detained class members with Category 1, 2, and 3 sponsors -- *i.e.* the majority
11 of class members -- to available licensed facilities no matter how long it may
12 take to release these class members to their potential sponsors.
13

14 Having failed to transfer detained class members to available licensed
15 facilities for weeks or months, Defendants argue that “[b]eing transferred to
16

17 16 *See, e.g.*, Plaintiffs’ Ex. 29 ¶¶ 11,12,14, Declaration of NDC [Doc. # 578-3]
18 (class member presented herself at a border checkpoint in Texas on or about
19 June 5, 2018, along with her father, step-mother, and three-month-old sister. She
20 was separated from her family and had been detained for approximately *140*
21 *days* when her declaration was taken); Ex. 52 ¶¶ 1, 2, 4, Declaration of DCC
22 [Doc. # 578-4] (class member is a fourteen-year-old boy with a mother in
23 Maryland detained for about *164 days* when he executed his declaration); Defs’
24 Ex. 2 [Doc. # 611-1] (Homestead medical clinic records show class member still
25 detained after six months); Defs’ Ex. 9 [Doc. # 611-2] (class member detained
26 for six weeks at Homestead prior to release); Defs’ Ex. 15 [Doc. # 611-3] (class
27 member detained for 40 days at Homestead prior to release to an uncle); Defs’
28 Ex. 16 [Doc. # 611-4] (class member detained at Homestead for 40 days prior to
release to his sponsor); Defs’ Ex. 11 [Doc. # 611-3] (class member detained for
77 days at Homestead prior to release to sponsor); Defs’ Ex. 23 [Doc. # 611-5]
(class member detained for 101 days at Homestead prior to release to his
sponsor); Defs’ Ex. 30 [Doc. # 611-6] (class member detained for 68 days prior
to release to sponsor).

1 new facilities just as they are to be released, and after they have already
2 developed positive connections with staff and other children in the Homestead
3 facility, would be harmful to children.” Opp. at 23-24, *citing* Sualog Dec. ¶
4 43.¹⁷
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26 17 Moreover, “a child’s case manager – who likely has developed a relationship
27 with the minor and his or her sponsor – would lose control of the reunification
28 case, and the case would move to a new case manager ... likely slowing the
release process.” *Id.*

1 Defendants nowhere explain or provide any documentary or evidentiary
2 support for their position that transferring a class member to a licensed facility
3 in accordance with the Settlement would “likely slow[] the release process.”¹⁸
4 Nor have Defendants provided any evidence linking class members’ developing
5 “relationships” with their case managers to class members’ release times. The
6 record discloses that class members generally only see their case managers once
7 a week, hardly a basis for violating the Settlement and deferring a minor’s
8 transfer to an available licensed facility for months at a time.¹⁹
9

11 Defendants make clear that “[e]ach week, case management teams
12 closely review lists of children who have been in care for 45 or more days,
13 and 75 or more days, and discuss how to address any ongoing barriers to their
14

16
17 Nor have Defendants shown any evidence that release was delayed for class
18 members with special needs who were expeditiously transferred to licensed
19 facilities under Defendants’ exception to the no-transfer rule.

20 ¹⁹ See Pls. Ex. 23 Declaration of KDL [Doc. # 578-3] (“About eight days after
21 arriving to Miami, I was finally taken to meet my case manager”); Pls. Ex. 29
22 Declaration of NDC [Doc. # 578-3] (“It wasn’t until August 1, 2018 that I
23 finally taken to see my ...case manager ... They explained that they were no
24 longer handling my case”); Pls. Ex. 31 Declaration of OCG [Doc. # 578-3] (“To
25 this day, I still don’t know what it going to happen to me as I have not spoken to
26 my case manager for over two weeks”); Pls. Ex. 36, Declaration of EA [Doc. #
27 578-4] (“I only see the clinician, or counsel, once every three weeks”); Pls. Ex.
28 50 Declaration of EGM [Doc. # 578-4] (“For the first fifteen days after I arrived
here, I was not able to talk with a social worker ... I was able to meet with a
social worker for the first time about eight days ago”); ORR Rule 2.3.2 Case
Managers (“The Case Manager provides weekly status updates ... to the UAC
on the child’s case and provision of services, preferably in person”) available at
<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2> (last accessed August 19, 2019).

1 release.” Opp. at 10, *citing* Sualog Dec. ¶ 42. At these 45- and 75-day reviews,
2 Defendants “discuss any ongoing barriers to [class members’] release,” *not* how
3 to expeditiously as possible transfer class members to licensed facilities.
4

5 Defendants concede that they do not “focus[e] on transferring UACs
6 from Homestead into other [licensed] facilities,” because their alleged “primary
7 goal” is to “release UACs ... to sponsors as expeditiously as possible.” Opp. at
8 24. The Settlement clearly requires that Defendants make and record continuous
9 efforts aimed at prompt release, but *also* that they as expeditiously as possible
10 transfer unreleased minors to available licensed facilities. However, Defendants
11 do not even “discuss” transferring minors at the 45 and 75 day reviews, nor do
12 they “focus” on the transfer of class members with Category 1-3 sponsors to
13 licensed facilities. They simply do not transfer them at all.²⁰
14

15
16 Paragraph 12.A(3) clearly states “in the event of an ... influx of minors
17 into the United States ... [Defendants] shall place *all* minors [in licensed
18 facilities] pursuant to Paragraph 19 as expeditiously as possible ...” *Id.*
19 (emphasis supplied).²¹
20
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23

24 20 On the other hand, Defendants claim it is their policy to “expeditiously”
25 transfer class members with special needs and those with no available sponsors
26 (what Defendants call Category 4 class members) to licensed facilities.
27 Opposition at 10. Defendants actually offer no data or any evidence showing that
28 they have in fact “expeditiously” placed special needs and Category 4 minors in
licensed facilities as appropriate beds became available.

21 Paragraph 19 also refers to “all minors.”

1 An evidentiary hearing is not necessary to assess whether the language of
2 the Settlement supports Defendants' eliminating class members with potential
3 Category 1-3 sponsors from the terms of Paragraphs 12A(3) and 19. The plain
4 meaning of the words used in the Settlement make clear that the transfer
5 provisions of Paragraphs 12A(3) and 19 apply to "all" class members, not just
6 those with special needs or with no available sponsors.
7

8
9 Defendants obviously possess records and data regarding the availability
10 of space in their licensed facilities. *Yet for no period of time have they or their*
11 *declarants provided any records or data showing a lack of available space in*
12 *their licensed facilities prevented the expeditious transfer of class members with*
13 *Category 1-3 sponsors from Homestead to those facilities.*
14

15 Defendants generally deem bed space insufficient within its licensed care
16 provider network when 85% of the available beds are occupied by class
17 members.²² When that occurs, class members meeting certain criteria are
18 transferred to Homestead rather than to a licensed facility.²³
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23 22 Ex. 10, Deposition of Karen Husted, ORR Federal Field Specialist ("Husted
24 Depo."), at 60:12-14. [Doc. # 578-2].

25 23 The ORR criteria for transfer to an Influx Facility include the minor being
26 between 13-17 years of age; speaks either English or Spanish; has no known
27 behavioral or medical issues; has no known special needs; is not be a danger to
28 self or others; does not have a criminal history; is not a perpetrator or victim of
smuggling or trafficking activities; is not part of a sibling group with a sibling(s)
age 12 years or younger; and is not pregnant or parenting. ORR Rule 1.7.2.

1 Plaintiffs have *not* contested the placement of class members at
2 Homestead when ORR may not have sufficient bed space available within its
3 licensed care provider network to place unaccompanied alien children.
4
5 Plaintiffs are challenging Defendants' failure to "as expeditiously as possible"
6 transfer the longest held class members out of Homestead when appropriate bed
7 space becomes available at licensed facilities as minors are released from those
8 facilities under Paragraph 14.
9

10 It is undisputed that once at Homestead, the longest held minors with
11 potential Category 1-3 sponsors have not been and are not being transferred to
12 beds that become available as class members in licensed facilities are released.
13
14 Instead, more recently apprehended minors are placed in available beds at
15 licensed facilities.
16

17 The number of class members detained at Homestead does not fluctuate
18 based on the number of class members being transferred to licensed facilities in
19 accordance with the Settlement, but rather "changes on a daily basis as children
20 are referred [to ORR] mostly by DHS and others are released to an appropriate
21 sponsor." Sualog Dec. ¶ 40.
22

23 Indeed, there is "currently no[]" maximum amount of time ORR allows
24 a child to be housed at Homestead. Husted Depo. at 60:10-21 [Doc. # 578-2]
25

26 Defendants claim that in June 2019 their licensed facilities were
27 operating at 98% capacity. Even then, as the licensed facilities released their
28

1 residents, Defendants do not dispute that class members with potential Category
2 1-3 sponsors – *i.e.* all class members except those with special needs or with no
3 sponsor – remained at Homestead for weeks or months while newly
4 apprehended class members were placed in available licensed facilities.

5
6 Opposition at 10; ORR Rule 1.2.1 Placement Considerations.

7 Instead, it is undisputed that class members remain at Homestead until
8 they are eventually released to a sponsor, or are deported, or turn 18 years old
9 and “age out” of unaccompanied minor status and are promptly transferred to
10 an ICE detention facility for deportation.
11

12 In short, even when bed space becomes available at an ORR licensed
13 facility, the longest held class members detained at Homestead are not
14 transferred to the licensed facility with available bed space unless they have
15 been identified as a special needs minor or as a Category 4 class member
16 because they have no available sponsors.
17
18

19 To remedy Defendants’ persistent violation of Paragraphs 12.A(3) and
20 19, selecting a number like 20 days for the transfer of minors to licensed
21 facilities may, as Defendants argue, be arbitrary and not clearly supported by
22 the plain text of the Settlement. Defendants should instead be ordered to
23 transfer class members held the longest at Homestead to appropriate available
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1 licensed facilities.²⁴ This would bring Defendants into compliance with the
2 terms of the Settlement requiring that they transfer detained class members to
3 licensed facilities as expeditiously as possible.
4

5 **C. ORR’s Rules on release are inconsistent with the terms of the**
6 **Settlement and cause delays and denials of prompt release**

7 Defendants argue that ORR is in compliance with Paragraph 14 of the
8 Settlement “because it releases UACs from Homestead to sponsors as
9 expeditiously as possible.” Opp. at 25. Defendants agree that this Court has
10 already interpreted “as expeditiously as possible,” under the Agreement to mean
11 in good faith and due diligence by Defendants. *Id. citing Flores v. Lynch*, 212
12 F. Supp. 3d 907, 914 (C.D. Cal. 2015), *aff’d in part, rev’d in part and*
13 *remanded*, *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016). When it comes to
14 release, Defendants argue “ORR has exercised ... good faith and due diligence,
15 and has taken the necessary steps to ensure that UACs at Homestead are released
16 to sponsors in a manner that is expeditious, while also ensuring the safety of
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22 ²⁴ Class members should only be transferred as expeditiously as possible to
23 licensed facilities appropriate for the transferred minors taking into account the
24 age, sex, accompanying siblings, and health. On the other hand, once an ORR
25 Federal Field Specialist has approved a class member’s release, and release
26 appears to be reasonably imminent, Paragraph 12.A(3) likely would not require
27 transfer to a licensed facility. ORR’s Federal Field Specialists “have the
28 authority to approve all unaccompanied alien children transfer and release
decisions.” ORR Rule 2.3.1 available at
<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section2#2.6> (last checked August 20, 2019).

1 UACs with their sponsors upon release.” Opp.at 25.²⁵ At best Defendants’
2 exhibits disclose sporadic and occasional efforts aimed at release.²⁶

3 ORR Rule 2.2.1 is entitled “Identification of Qualified Sponsors.”
4
5 Category 1 includes parents and legal guardians and is consistent with
6 Paragraph 14.A and .B of the Settlement.

7 ORR’s Category 2A includes “[a]n immediate relative--a brother; sister;
8 grandparent or other close relatives (aunt, uncle, first cousin) who previously
9 served as the UAC’s primary caregiver. (This includes biological relatives,
10 relatives through legal marriage, and half-siblings). Category 2B includes
11 “[a]n immediate relative -- including aunt, uncle, or first cousin who was not
12 previously the UAC’s primary caregiver. (This includes biological relatives,
13 relatives through legal marriage, and half-siblings).” Category 2A is
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19 25 Paragraph 14 provides that Defendants “shall release a minor from its
20 custody without unnecessary delay.” Defendants dedicate pages of their
21 Opposition to show that some class members’ case notes disclose occasional
22 meetings with case managers, or legal orientations, or in a small number of cases
23 a sponsor needed to secure a document to satisfy ORR that release could be
24 accomplished safely. Opp. at 25-28. However, in not a single case have
25 Defendants provided documentary evidence that “upon taking a minor into
26 custody... [ORR] [m]a[d]e and record[ed] ... prompt and continuous efforts ...
27 toward family reunification and the release of the minor pursuant to Paragraph
28 14 ...” Settlement ¶ 18. Nor have Defendants provided evidence to show that
“[s]uch efforts at family reunification ... continue[d] so long as the minor [was]
in [ORR] custody.” *Id.*

26 *See, e.g.,* Defs’ Ex. 11 [Doc. # 611-3] at 3-4 (a few phone calls); Defs’ Ex. 22
27 [Doc. # 611-5] at 2-4 (a few conversations with sponsors and UAC about
28 “outstanding documents”).

1 inconsistent with Paragraph 12C which does not require that the relative was
2 previously the UAC's primary caregiver.

3 ORR's Category 3 includes "Other sponsor[s], such as distant relatives
4 and unrelated adult individuals." This category seemingly includes non-relative
5 sponsors identified in Paragraph 14 of the Settlement (unrelated adults
6 designated by a parent, licensed group homes, and other responsible unrelated
7 adults). ORR's Category 4 includes class members with "[n]o sponsors
8 identified."
9

11 ORR's policy is that potential Category 3 sponsors "who are unable to
12 provide verifiable documentation of a familial relationship with the
13 unaccompanied alien child must submit evidence that reliably and sufficiently
14 demonstrates a bona fide social relationship with the child and/or the child's
15 family that existed before the child migrated to the United States. ... ORR may
16 require that the potential Category 3 sponsor, the UAC, and the child's family,
17 establish ongoing regular contact while the child is in ORR care, prior to a
18 release recommendation." ORR Rule 2.2.4.²⁷
19

21 Nothing in the text of Paragraph 14 permits Defendants to restrict
22 Category 3 sponsors – *i.e.* sponsors identified in the Settlement at ¶ 14 D-F –to
23

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26 ²⁷ There is no question but that Defendants implement this policy. *See, e.g.*,
27 Defs' Ex. 31 [Doc. # 611-7] (class member's case manager was eventually able
28 to locate a sponsor for him "after many delays cause by his lack of relationship
to initial candidates for sponsorship").

1 those who can provide evidence that “demonstrates a bona fide social
2 relationship with the child and/or the child’s family that existed before the child
3 migrated to the United States,” nor do ¶¶ 14D-F permit ORR to “require that
4 the potential Category 3 sponsor, the UAC, and the child’s family, establish
5 ongoing regular contact while the child is in ORR care, prior to a release
6 recommendation.”²⁸
7

8 **III. CONCLUSION**

9
10 For all the reasons stated above, Plaintiffs’ Motion should be granted and
11 Defendants ordered to (i) promptly release class members to sponsors described
12 in Paragraph 14, (ii) as expeditiously as possible transfer class members to the
13 first available licensed facility (taking into account the class member’s age, sex,
14 accompanying siblings, and health) unless an ORR Federal Field Specialist has
15 approved a class member’s release, and release appears to be reasonably
16 imminent, and (iii) provide detained class members an hour a week to speak in
17 private on the telephone with their parents or potential sponsors to facilitate
18 prompt release.
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23 ²⁸ Regular contact with class members is of course made more difficult by the
24 fact that Defendants restrict class member phone calls with parents or sponsors
25 to 20 minutes per week. *See* ORR Rule 3.3.10 Telephone Calls, Visitation, and
26 Mail (“Unaccompanied alien children must be provided the opportunity to make
27 a minimum of two telephone calls per week (10 minutes each) to family
28 members and/or sponsors, in a private setting”); Pls. Ex. 33, Declaration of SLL,
[Doc. # 578-3] (10 minutes twice a week); Pls. Ex. 48 Declaration of JNB [Doc.
578-4] (same); Pls. Ex 15 Declaration of CJB [Doc. #587-3] (same).

1 Dated: August 23, 2019

Respectfully submitted,

2
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CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On this date, August 23, 2019, I electronically filed the following document(s):

- PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO ENFORCE

with the United States District Court, Central District of California by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

On August 23, 2019, I also served true and correct copies of the above document to the interested parties by sending copies to the email address of defendants' counsel Sarah Fabian.

/s/Peter Schey
Attorney for Plaintiffs